

## BOARD OF ZONING APPEALS MEETING

October 17, 2013

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff</u>
Mr. Dyer	Mr. Campbell	Clarke Whitfield
Mr. Hiltzheimer	Mr. Snipes	Ken Gillie
Mr. Nicholas	Mrs. Evans	Renee Burton
Mrs. Rich		Scott Holtry
		Christy Taylor

Chairman Dyer called the meeting to order at 10:00 a.m.

### I. ITEMS FOR PUBLIC HEARING

Mr. Dyer stated I am going to change things a little. We have one applicant that has requested that his item be held until next month.

*Item 3. Variance Application Number PLVAR20130000317, filed by Joseph Miller requesting a variance from Article 3E, Section F, Item 2a(2), of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 149 Winstead Drive, otherwise known as Grid 0613, Block 065, Parcel 000009 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to construct an addition in the side yard creating a one (1) foot side yard setback where six (6) feet is required.*

**Mr. Nicholas made a motion to continue Variance Application PLVAR20130000317 per the applicant's request until November. Mrs. Rich seconded the motion. The motion was approved by a 4-0 vote.**

*Item 1. Variance Application Number PLVAR20130000314, filed by I.H. McBride Sign Co. requesting a variance from Article 10, Section P, Items 1a and 5, of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 2001 Piney Forest Road, otherwise known as Grid 2917, Block 006, Parcel 000001 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to erect a 98 square foot ground sign where 75 square foot is the maximum allowed.*

Five notices were mailed to surrounding property owners within 300 feet of the subject property. One respondent was not opposed; one respondent was opposed.

Open the Public Hearing.

No one was present to speak on behalf of the request.

Close the Public Hearing.

**Mr. Nicholas made a motion to deny Variance Application PLVAR20130000314 citing staff's recommendation and seeing no reason that the application meets three of the four criteria. Mrs. Rich seconded the motion. The motion was approved by a 4-0 vote.**

*Item 2. Variance Application Number PLVAR20130000315, filed by 101 Mobility on behalf of John and Violet Carroll requesting a variance from Article 3E, Section F, Item 2a(1), of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 734 Colquhoun Street, otherwise known as Grid 2717, Block 015, Parcel 000008 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to construct a handicap ramp in the front yard creating a zero (0) foot front yard setback where 20 feet is required.*

Sixty-five notices were mailed to surrounding property owners within 300 feet of the subject property. Seventeen respondents were not opposed; one respondent was opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Dave Seacoach with 101 Mobility. We understand that the ramp is not in compliance with City ordinance, but there is really no other place to put it. It is kind of dangerous for Mr. Carroll to not be able to get out of the house. The ramp is going to probably be up for maybe six months to a year. He is not doing very well. We really couldn't put it any other place and there is nothing else we could do to get him in and out of the house. If we take the ramp down, in order to get him in and out of the house you would have to call the Fire Department or have somebody come and tear him out of the house.

Mrs. Rich asked is it my understanding that this ramp is going to be temporary?

Mr. Seacoach responded it is temporary authorized by the Veterans Administration.

Mr. Nicholas asked would the applicant have a problem with the conditional approval that the ramp has to be taken down when the property transfers ownership?

Mr. Seacoach responded as soon as Mr. Carroll is done with the ramp, we take it down and bring it back to the VA.

Mr. Nicholas asked so that is put in as a condition of approval and you do not object?

Mr. Seacoach responded no.

Mr. Dyer asked so this is actually being furnished by the VA specifically to Mr. Carroll and it will not stay there once he no longer needs it?

Mr. Seacoach responded yes. Once he no longer needs it we will remove it.

Present in favor of the request was Ms. Mattie Fraiser. Ms. Fraiser I am one of Mr. Carroll's neighbors and his wife asked me to come down here with her, but she hasn't gotten here yet. The ramp is the only way that he can come out of the house. He can't just walk up and down the steps like you and I could. He had a stroke.

Present in favor of the request was a neighbor of Mr. Carroll. I think it would be a wonderful thing if she could get a ramp for him to come down.

Close the Public Hearing.

There was some discussion about the condition of approval.

**Mr. Nicholas made a motion to approve Variance Application PLVAR20130000315 with the condition that the ramp be removed upon property transfer or when it is no longer needed. Mrs. Rich seconded the motion. The motion was approved by a 4-0 vote.**

*Item 4. Variance Application Number PLVAR20130000326, filed by Jon Tibbs of Blair Construction on behalf of the Danville YMCA, requesting a variance from Article 8, Section E., of Chapter 41 of the Code of the City of Danville, Virginia, 1986, as amended (City of Danville Zoning Ordinance) at 215 Riverside Drive, otherwise known as Grid 2709, Block 001, Parcel's 000021 & 000022 of the City of Danville, Virginia, Zoning Map. The applicant is requesting to reduce the number of required parking spaces due to environmental concerns.*

Twenty-two notices were mailed to surrounding property owners within 300 feet of the subject property. Six respondents were not opposed; zero respondents were opposed.

Open the Public Hearing.

Present on behalf of the request was Mr. Bob Mitchell. I have read the conditions, but let me give you a little background information. When the Y purchased this property, they have done everything possible to utilize the property, meaning parking spaces and utilization of the building. What we are talking about today is the parking lot on the east end of the property. This is actually an incredible hardship on them. The economic loss of not being able to use the property like they want to, is probably around \$125,000. That is the purchase of the property, now we are at the point of not being able to use that for a parking lot and only use it for a playground. That is a pretty expensive playground. The remoteness of the parking lot was very difficult, but still we were doing it because we were trying to comply with all of the regulations. The entire piece lies in the flood plain. The unique thing about this parking lot is that half of it lies within the floodway. The important thing about that is the Corps of Engineers dictates what you can and can't do. There is a permit that overrides this. As an engineer I looked at this and thought it was not the worst thing in the world. There is a lot of rock so we planned to raise the grade of the parking lot. I checked with the engineers at Dewberry and they said that could not be done. You specifically cannot raise the grade above what was there. Normally what we would do is put down some fabric, put some stone in, and put the parking lot on top of it. We were planning on doing that, but as it turned out we could not do that; because that puts us having to dig or excavate below that. The problem is that it is a bottomless pit. F&R came out there and looked at it and gave us a potential solution to rectify the problem. Their solution was going to cost somewhere around \$125,000 to \$130,000 and then another couple hundred grand to excavate the dirt. That would be another \$300,000 plus. We called Hurt & Profit and they essentially told us the same thing and their solution was \$20,000 or \$30,000 less. We have already gone \$732,000 over budget because of the rock on site. We are a million dollars in the hole on rock and we have already spent on the parking lot \$125,000 for land and \$115,000 to remove some unknown walls.

Mr. Nicholas asked if we don't grant this variance how much more money would you have to spend?

Mr. Mitchell responded I know within the nature of \$350,000 minimum. It could go more. We simply don't have the money. We are just over budget and it has overwhelmed us. We have reconfigured parking on the lot. We have tried to explore additional parking next door. We have 58 on the north, the river on the south, mud on the east, and no more land we can buy on the west. We are absolutely landlocked. Honestly, we don't know what we would do beyond what we have done. I hate to even delay the project. We don't ask this carelessly. We don't know what else to do. I appreciate your consideration.

Mr. Hiltzheimer asked what would the Corps of Engineers say?

Mr. Mitchell responded I have been on the phone with them and have probably gotten 10 or 15 emails. We cannot raise the grade in that lower parking lot at all. The only thing we can do is try to excavate a bottomless pit. We would dig with a backhoe about 12" and when you get down below that it just starts caving in. He couldn't even dig it fast enough and walk away. The only thing we could do is hire an engineer to do a flood study to show them that if we raise the grade of the parking lot it would not impact the hundred year flood, downstream or upstream. There is a thing called a backwater curve. This is like throwing water in a hurricane. That would probably cost us six months of time and another \$30,000 or \$40,000 in engineering fees. That is not your problem, but it is compounding our problem.

Mr. Hiltzheimer asked what is the minimum required now by Code for parking?

Mr. Mitchell responded I believe it is 189 spaces.

Mr. Nicholas asked how many spaces are they going to be short?

Mr. Mitchell responded 181 and now we have 139.

Mr. Dyer asked how did this happen? Did someone not do their due diligence? When someone laid out this parking lot did they not go down there and check to see that it was just a mud hole?

Mr. Mitchell responded I have had to stand in front of their Board for the last several months giving them bad news. Dewberry and F&R had punched like 25 or 30 holes in the ground. We planned for everything we knew. All due diligence was done. I have been doing this all of my life. I have done several hundred sites. This is the worst situation or site I have ever had. You are blocked in by the river. You are blocked in by the road.

Mr. Nicholas asked why wasn't this foreseeable?

Mr. Mitchell responded we done everything we could to foresee it. We hired engineers. We have done everything they have instructed. We have run into more unknown conditions and have explored them. Everyone has done their due diligence. God does things we can't control.

Mr. Gillie stated from staff's perspective in reviewing the plans, they did an engineering report. They used all standard engineering practices. They did a grid pattern and test bores. Every site that they did the test bore was fine. The problem is that the parking lot is not just built over that one little hole and this little hole. The area between those holes in the standard grid that they used is where that problem is lying. In their defense, they did everything they could based on the flood reduction, the engineering. Mother Nature has come out to bite them on this one. We ran into a similar problem when we built the parking lot on Bridge Street. We did all of our bores and engineering work ahead of time and once construction started we dug a spot that was right between two of our bore holes and it filled up full of water. We were good where the holes were but that 10' in between is where the problems were. When you are doing something that close to the river you can do all of the engineering, but until actual construction starts you just don't know.

Mr. Dyer called recess at 10:23 a.m.

The meeting resumed at 10:45 a.m.

Present on behalf of the request was Ms. Sara Folmar, CEO of YMCA. Our current facility is about a 4,000 to 6,000 square foot facility and we have 68 parking spots. The nice thing about the Y is that we are open from 5:30 in the morning until 9:30 at night and seven days a week, so our membership is staggered throughout the day. At no time do all the members come at once. They are proposing to more than double the parking at the new facility. Even if we double our membership we will still be within those guidelines.

Mr. Nicholas stated the new building is larger than the original building.

Mr. Dyer stated it is not significantly larger.

Mr. Nicholas asked are you operating on a variance now?

Mr. Dyer responded no. I know that you are in partnership with the hospital and things like that. Do you foresee situations where you would have meetings there or classes that would put a strain on your parking?

Ms. Folmar responded occasionally we would have events and meetings. I do know that there is a parking lot diagonal from the site that is available for parking. I don't know how many spots are over there, but we could always utilize that.

Mr. Dyer asked who owns that parking lot?

Mr. Gillie responded where the old buildings used to be is a city lot.

Mr. Dyer asked do you have any problems with your parking now? You have overflow parking on Main Street now. You have street parking whereas here there is not going to be any street parking.

Ms. Folmar responded it is very seldom that we have trouble.

Mr. Dyer stated I heard at one time that you were anticipating tripling your membership.

Ms. Folmar stated there was a marketing study that was done in 2008 and they said that we were subject to almost triple our membership, but they have a tendency to overestimate.

Present on behalf of the request was Mr. Tim Clark, Blair Construction. We have also approached the adjacent land owner to try and work something out with them as far as donating or buying more property. They have not been willing to do that. That is the River Partnership Group. At the end of the day their property is also in the floodplain. Eventually we anticipate that there will be parking there and it will end up being shared parking. It will essentially be a gravel lot. I approached the group and they do not plan to fence off or sign off the lot in any way.

Close the Public Hearing.

Mr. Dyer asked are we not setting precedence where when somebody doesn't do their homework that they can come back to the Board and say that we have to let them do something because there is nothing else they can do?

Mr. Gillie responded they can always ask. I don't feel that this sets precedence. Reason being is that they did their due diligence. They did the studies. We worked extensively with their engineering company because we knew the site had some challenges. The problem happened after construction. We approved the plans. They had sufficient area. They met all of the Code requirements. Everything appeared to work. Once the site was under construction, physically it can't and that is one of the reasons for granting a variance, a physical hardship of the property not generated by the applicant. In this case, they did everything they were supposed to do. From a city end, we did everything. We made them do everything they were supposed to do. Once construction started they had a problem. It is rare for us to say that they meet all of the criteria. We feel they do. Yes they will have less than the number of spaces required. Will it create a substantial detriment on the surrounding neighborhood? We don't feel so. There may be times that there are parking issues. We feel that the adjacent property is going to be developed. I can't tell people to park on that lot, but people are going to be people and they are going to park wherever they can.

Mr. Nicholas asked what evidence do you see that they didn't do their homework?

Mr. Dyer responded when you propose to build a building like this you are supposed to do preliminary studies. You are supposed to drill core samples.

Mr. Nicholas stated what I am hearing from staff is that they did that.

Mr. Dyer stated perhaps the standards are lacking. If this is done on a 10' grid maybe they need an 8' grid. That is not what we are here to discuss. If the city feels like they did all of their due diligence then I am satisfied.

Mr. Nicholas asked have we encountered this issue before?

Mr. Gillie asked the Board of Zoning Appeals or me personally; me personally, yes; the Board, no.

Mr. Nicholas stated then perhaps we should say that the precedence that could be set is now we know this problem exists on these lots that are in the floodplain; so going forward anyone who would apply for construction permits or wants to build a parking lot will perhaps need to do more extensive due diligence than what was done here. In other words, I agree with Gus in that something was missed; but from what we have heard today, I don't think it is the Y's fault.

Mr. Gillie stated standard engineering practices is something that they have. I can't speak for the engineers.

Mrs. Rich stated and we can't change that.

Mr. Nicholas stated if it is beyond our purview then it is beyond our purview.

Mr. Whitfield stated I think it is beyond your purview because you are essentially telling applicants that they have to go beyond what the standards are.

Mr. Dyer stated I don't think we can do that. I think we will have to evaluate each situation on its own merits.

Mr. Whitfield stated every case is a case by case issue.

Mr. Dyer stated maybe legally, but morally if we give somebody a variance because they are well connected.

Mr. Nicholas stated in this case they did their due diligence and everything we could reasonably require them to do.

Mr. Dyer stated they reconfigured the parking lot by eliminating a needed island. Were those islands required by Code?

Mr. Gillie responded no they were not required by Code.

Mr. Dyer stated so we are not losing any landscaping. We are actually gaining it because it will be grass instead of asphalt. Will they still meet the minimum requirements for landscaping?

Mr. Gillie responded they will more than meet the minimum and they will have an additional area that they basically can't do anything with.

**Mr. Nicholas made a motion to approve Variance Application PLVAR20130000326 citing the due diligence performed by the Y, the un-foreseeability of this case, in addition to recommendations by staff. Mrs. Rich seconded the motion. The motion was approved by a 4-0 vote.**

## **II. APPROVAL OF MINUTES**

**The June 20, 2013 minutes were approved by a unanimous vote.**

### **III. OTHER BUSINESS**

Mr. Gillie stated you have the case held over from this month and we are possibly expecting another case. October 24<sup>th</sup> the River District will have its inaugural meeting. Any appeal of their decisions will go directly to City Council, so you shouldn't see any of those cases. Next year if anyone is interested in any training I am going to put it in the budget. We have some people who are coming off the Board at the end of this year or whose term expires. If you are interested in being reappointed please talk to Sue Demasi the City Clerk.

Mr. Dyer asked do I come off?

Mr. Gillie responded Mrs. Rich does, Mr. Hiltzheimer does, Mr. Snipes, and Mr. Campbell. Gus you are still on until 2016.

With no further business, the meeting adjourned at 10:58 a.m.

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APPROVED